

REMARKS

This responds to the Office Action mailed on March 5, 2007. Claims 1-34 are pending in this application.

§103 Rejection of the Claims

Claims 1-4, 7, 9-15, 18-19, 21-24 and 27-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Beard et al. (US 5,640,524, hereinafter “Beard”), in view of Applicant’s admitted prior art (hereinafter “Kohn”), further in view of Cray Assembly Language Systems Reference Manual (hereinafter “Cray”). Applicant respectfully traverses the rejection.

The Office Action noted Applicant’s declaration under 37 C.F.R. § 1.131 concerning the inapplicability of using the Cray reference in the rejection, but deemed the declaration insufficient. The Office Action additionally requires evidence of actual reduction to practice of the invention prior to the date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent actual reduction to practice, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (constructive reduction to practice).¹

Applicant respectfully submits that the declaration is sufficient to remove the rejection under § 103(a) because it establishes that the invention took place before the publication of the Cray reference. Also, a requirement of evidence of actual reduction to practice, or conception and reduction to practice coupled with a showing of diligence between the conception and reduction to practice, is not appropriate. This requirement of diligence is associated with an interference under § 102(g) rather than invention under § 103(a) or § 102(a). Such a requirement also ignores the grace period provided in § 102(b). Applicant respectfully submits that the showing of diligence is not required.

Applicant respectfully submits that the declaration is sufficient to remove the rejection under § 103(a), and requests withdrawal of the rejection and allowance of claims 1-4, 7, 9-15, 18-19, 21-24 and 27-34.

¹ Office Action, pgs. 28-29.

Allowable Subject Matter

Claim 8 has been allowed. Applicant acknowledges the allowed subject matter.

Claims 5-6, 16-17, 20, and 25-26 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5-6 ultimately depend on base claim 1, claims 16-17 and 20 ultimately depend on base claim 11, and claims 25-26 ultimately depend on base claim 21. Applicant acknowledges the allowable subject matter but believes the base claims are allowable in their present form at least for the reasons set forth above.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 371-2172 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By his Representatives,

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Date May 4, 2007

By Paul J. Urbanski

Paul J. Urbanski

Reg. No. 58,351

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 4th day of May, 2007.

JONATHAN FERGUSON

Name

Jonathan Ferguson

Signature